



# UNITED STATES PATENT AND TRADEMARK OFFICE

*Cen*

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,894	03/19/2004	Edward P. Browne	PO-8155/MD-04-18	8194
157	7590	01/17/2008	EXAMINER	
BAYER MATERIAL SCIENCE LLC 100 BAYER ROAD PITTSBURGH, PA 15205				ART UNIT <span style="border: 1px solid black; padding: 2px;"> </span> PAPER NUMBER <span style="border: 1px solid black; padding: 2px;"> </span>

DATE MAILED: 01/17/2008

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Notification of Non-Compliant Appeal Brief (37 CFR 41.37)</b>	Application No. 10/804,894	Applicant(s) BROWNE, EDWARD P.
	Examiner Michael J. Feely	Art Unit 1796

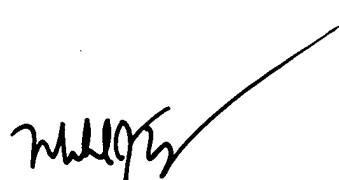
--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 13 November 2007 is defective for failure to comply with one or more provisions of 37 CFR 41.37.

To avoid dismissal of the appeal, applicant must file an amended brief or other appropriate correction (see MPEP 1205.03) within **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer. **EXTENSIONS OF THIS TIME PERIOD MAY BE GRANTED UNDER 37 CFR 1.136.**

1.  The brief does not contain the items required under 37 CFR 41.37(c), or the items are not under the proper heading or in the proper order.
2.  The brief does not contain a statement of the status of all claims, (e.g., rejected, allowed, withdrawn, objected to, canceled), or does not identify the appealed claims (37 CFR 41.37(c)(1)(iii)).
3.  At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 41.37(c)(1)(iv)).
4.  (a) The brief does not contain a concise explanation of the subject matter defined in each of the independent claims involved in the appeal, referring to the specification by page and line number and to the drawings, if any, by reference characters; and/or (b) the brief fails to: (1) identify, for each independent claim involved in the appeal and for each dependent claim argued separately, every means plus function and step plus function under 35 U.S.C. 112, sixth paragraph, and/or (2) set forth the structure, material, or acts described in the specification as corresponding to each claimed function with reference to the specification by page and line number, and to the drawings, if any, by reference characters (37 CFR 41.37(c)(1)(v)).
5.  The brief does not contain a concise statement of each ground of rejection presented for review (37 CFR 41.37(c)(1)(vi)).
6.  The brief does not present an argument under a separate heading for each ground of rejection on appeal (37 CFR 41.37(c)(1)(vii)).
7.  The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 41.37(c)(1)(viii)).
8.  The brief does not contain copies of the evidence submitted under 37 CFR 1.130, 1.131, or 1.132 or of any other evidence entered by the examiner **and relied upon by appellant in the appeal**, along with a statement setting forth where in the record that evidence was entered by the examiner, as an appendix thereto (37 CFR 41.37(c)(1)(ix)).
9.  The brief does not contain copies of the decisions rendered by a court or the Board in the proceeding identified in the Related Appeals and Interferences section of the brief as an appendix thereto (37 CFR 41.37(c)(1)(x)).
10.  Other (including any explanation in support of the above items):

See attached document.



Michael J. Feely  
Primary Examiner  
Art Unit: 1796

**DEFECTIVE APPEAL BRIEF (Filed November 13, 2007)**

1. The brief does not contain the items required under 37 CFR 41.37 (c), or the items are not under the proper heading or *in the proper order*. After the Arguments section (VII. ARGUMENT), the brief concludes with:

- VIII. CONCLUSIONS;
- XI. CLAIMS APPENDIX;
- X. EVIDENCE APPENDIX;
- XI. RELATED PROCEEDINGS APENDIX.

The inclusion of a heading titled “CONCLUSIONS” puts the remaining headings, as a whole, in improper order. The conclusions should not be listed with their own numbered heading; rather, they should be incorporated into the ARGUMENT section.

2. The submitted EVIDENCE APPENDIX features five court decisions that have been incorrectly included in this appendix. The evidence appendix is reserved for evidence *entered by* the examiner and *relied upon* by appellant in the appeal. Reference to un-entered evidence is not permitted in the brief.

3. A corrected brief should conclude with the following:

- VIII. CLAIMS APPENDIX

The appendix should start on a new page and include the claims, as presented on pages 13-15 of the instant brief.

- IX. EVIDENCE APPENDIX

The appendix should start on a new page and indicate “none”.

- X. RELATED PROCEEDINGS APPENDIX

The appendix should start on a new page and indicate “none”.

***Information Disclosure Statement***

4. The information disclosure statement filed December 3, 2007 fails to comply with 37 CFR 1.97(d) because it lacks a statement *as specified* in 37 CFR 1.97(e). It has been placed in the application file, but the information referred to therein has not been considered.

(e) A statement under this section must state either:

(1) That each item of information contained in the information disclosure statement was first cited in any communication from a foreign patent office in a counterpart foreign application not more than three months prior to the filing of the information disclosure statement; or

(2) That no item of information contained in the information disclosure statement was cited in a communication from a foreign patent office in a counterpart foreign application, and, to the knowledge of the person signing the certification after making reasonable inquiry, no item of information contained in the information disclosure statement was known to any individual designated in § 1.56(c) more than three months prior to the filing of the information disclosure statement.

5. The information disclosure statement filed December 3, 2007 fails to comply with 37 CFR 1.98(a)(1), which requires the following: (1) *a list* of all patents, publications, applications, or other information submitted for consideration by the Office; (2) U.S. patents and U.S. patent application publications listed in a section separately from citations of other documents; (3) the application number of the application in which the information disclosure statement is being submitted on each page of the list; (4) a column that provides a blank space next to each document to be considered, for the examiner's initials; and (5) a heading that clearly indicates that the list is an information disclosure statement. The information disclosure statement has been placed in the application file, but the information referred to therein has not been considered.

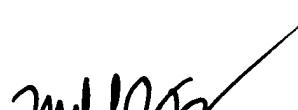
No list (PTO-1449) was provided.

***Communication***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael J. Feely whose telephone number is 571-272-1086. The examiner can normally be reached on M-F 8:30 to 5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Y. Pyon can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



Michael J. Feely  
Primary Examiner  
Art Unit 1796

January 11, 2007

**MICHAEL FEELY  
PRIMARY EXAMINER**